

In the matter of Sales Tax Bar Association vs. UOI & Ors. (W.P (C) NO. 9575
OF 2017)

Representation on behalf of the Petitioners.

As per Court's Direction the petitioner is making the following submissions of the issues & grievances which are being faced by the tax payers on a daily basis.

A. Issues related to GSTR-9

- a. Change log/release notes are not provided for GSTR-9 offline utility. The users therefore have absolutely no way to know as to which problems are being solved/improved upon in the updated version of GSTR 9 (Exhibit A-1)
- b. JSON file from previous version of GSTR-9 offline tool cannot be imported and used to generate correct GSTR-9 JSON, in new updated version of offline tool released by GSTN. Dependency is on JSON file generated from portal only. Therefore, if the return has already been filled up in previous version of offline utility, and in the meanwhile a newer version is released, then one has to re-prepare the entire GSTR 9 annual return, using JSON file downloaded from GSTN portal. (Exhibit A-2, A-3 and A-4)

B. Issues related to HSN Schedule

- a. For taxpayer falling within the slab of less than 1.5 crores of turnovers, filling of HSN code details has been made optional as per GST law as well as per instructions of Form GSTR-9. However, if such taxpayers wish to fill the HSN Schedule with only description of goods/services and not providing the HSN code, the portal/offline tool does not allow him to do so.(Exhibit A-5)
- b. For services, the portal is asking for compulsory filling of services code of 6 digits code. This is directly contrary to provisions of Notification no. 12/2017-Central Tax dated 28.06.2017 issued in exercise of powers under proviso (i) to Rule 46 of the CGST Rules, 2017. (Exhibit A-6)
- c. Even though offline tool provide option to enter 2 digits for goods, nevertheless online form does not provide this option.
- d. Amount of tax has to be exact Rupees and rounded off not accepted in HSN schedules (Table 17 and 18 of GSTR-9). This is directly contrary to Section 170 of the CGST Act, 2017. Further, this is creating insurmountable difficulties to assessee, as there is

no mechanism to ascertain and know as to which invoice is not matching.(Exhibit A-7)

- e. In HSN schedule negative values cannot be entered. There are cases where values of credit notes/deductions exceed the value of turnover in which cases negative values are to be reported. However, portal/ offline tool for GSTR 9 doesn't allow filing of negative figures. (Exhibit A-8)

C. Credit note issues-

a. Credit note cannot be issued for incorrect tax rate.

Eg.:- (a) Rate change - 18% to 5%. This is explained by way of an illustration: Say in an invoice, by mistake tax is charged @18%, whereas it was actually chargeable @ 5%. When the said clerical error is pointed out by the buyer, the difference of 13% tax wrongly charged is to be reversed by issuance of credit note. However, the portal doesn't allow making of a credit note unless there is a difference in taxable value. Therefore there is absolutely no mechanism to issue a credit note in such like cases.

(b) Suppose if by mistake the tax payer writes in the invoice Rs. 37,000 instead of Rs. 36,000/- then no mechanism for issuing credit note for Rs. 1000/- because the tax payer is required to mention the values as also the tax rate for generating the credit note.

b. Even though the GST law allows a tax payer to issue credit note against multiple invoices, the portal does not allow the tax payer to do so as it the portal asks for single invoice number in respect of which credit note is to be issued.

- D. GSTR-2A issue-** It is submitted that as per law, GSTR-2A/6A should be generated in the month in which GSTR-1 is filed. However, on the portal GSTR-2A is also being generated in the next month of the month in which GSTR-1 is filed and also the counter party filing status shown on the portal is "not filed", even though counter party has filed GSTR-1 timely. For Example: Invoices has been reported in GSTR-1 of March 2019 (and filed in April 2019) but GSTR-6A is generated for the month of April 2019 with counter party status as "Not filed". (Exhibit A-9 to A-15)

E. Grievance mechanism

- a. Most of the times, the grievance mechanism is unable to understand the problem. Either no responses are provided or vague or irrelevant responses are provided.
- b. Further, there is no trail available on the portal of the query raised and further communications made qua that query. We cannot see history of ticket. We can only see status if it is open or closed.
- c. Grievance reporting mechanism after login and without login is different

After login to <https://www.gst.gov.in/>, Grievance / Complaints reporting options are limited only to:

- a. Complaint against registered taxpayer/unregistered person
 - b. Grievance against payment (PMT-07)
- (Exhibit A-16)

Whereas grievance/complaint options available on Grievance Redressal Portal (<https://selfservice.gstsystem.in/>) is very limited. Taxpayers have no option to search for grievances raised for more than 1 year (*after login to gst common portal*)(*notwithstanding the fact that options available on common portal is limited to two only, as explained in above para*). Whereas record relating to raising of queries is vital and would be quite relevant at the time of audits/scrutiny/assessments. (Exhibit A-17)

- d. Tax payers should be given an option to create account on Grievance portal or existing account on GST common portal (<https://www.gst.gov.in/>) should be linked with Grievance portal too. Also they must be given an option to search through entire history of transactions/grievances based on date, both on common portal as well Grievance portal.
- e. There are no FAQs available on Grievance/Common portal for Form GSTR-9C related issues/errors. (Exhibit A-18)
- f. For GSTR-9, for many options FAQs are not available. (Exhibit A-19)
- g. As per DSC FAQ, **port 1645** should be free for smooth working of em-signer (https://selfservice.gstsystem.in/view_faq_details.php?i=MjY5OQ==), (Exhibit A-20)

Whereas as per Downloading and Installing the Web Socket Installer instructions (<https://www.gst.gov.in/system/>) following ports should be open -

1.1585
 2.2095
 3.2568
 4.2868
 5.4587

(Exhibit A-21)

Whereas, another page

(https://tutorial.gst.gov.in/userguide/loginanddsc/#t=Troubleshoot_DSC_Issues.htm)

Mentions port 1585 (Exhibit A-22)

It is a common knowledge that for emsigner (ver 2.6) used for GST, port 1585 should be opened, advising port 1645 is creating unnecessary confusion.

F. There is no mechanism to locate the territorial jurisdiction while registration of a new assessee. The process needs to be streamlined so as to enable the tax payer to easily identify the territorial jurisdiction to be filled in the Registration Form. The portal may provide the jurisdiction on the basis of the PIN Number which shall make the process easier for the assessees.

G. Issues related to GSTR- 9C:

- a. In case new version of utility (GSTR-9c) is launched tax payers have to re-type entire data once again. Importing JSON file from old version of utility creates errors/inconsistencies especially in table 9 and 14, part V, etc. (Exhibit A-23)
- b. Negative value of turnover in table 5A cannot be entered. There might be a situation that in a particular GSTIN (Entities having multiple GSTINs under same PAN) turnover values are in negative but at PAN level, aggregate turnover is more than 2 cr). Eg. GSTIN of GOA unit of Company A has sales return during April 2017 to June 2017 of let's say 50 thousand rupees and there are no further taxable supplies during July 2017 ~ March 2018. Since company A's aggregate turnover is more than 2 cr, it is mandatory for it to get GST audit done for its Goa GSTIN in form 9C. Now since turnover as per profit and loss statement of Goa GSTIN is in negative (as per Indian GAAP turnover has to be in negative),

there is absolutely no option to enter negative values in table 5.A of GSTR-9C. (Exhibit A-24)

- c. Name of "other expenses 1" etc. cannot be edited. Mentioning "other expenses 1, 2" does not make any sense.
- d. Further there is a limit imposed of only 5 for "other expenses", i.e. "Other expenses 1" to "Other expenses 5" (Exhibit A-25)

As per instructions to form GSTR-9C- *"...this is only an indicative list of heads under which expenses are generally booked. Taxpayers may add or delete any of these heads but all heads of expenses on which GST has been paid / was payable are to be declared here."*

Therefore, provisions made in offline tool is directly contrary to instructions of form GSTR-9C. This will

Further, this is creating insurmountable difficulties for assessee as well as auditors. Not only there is an artificial restriction imposed by GSTN on number of line items on reportable expenses but this is also forcing assesses (and auditors) to either map expenses to fixed line items available in table 14 or create additional paper/audit trail to map expenses to "other expenses 1" to "other expenses 5"

A simple solution is to allow taxpayers/auditors to allow as many line items they want in table 14 and whatever name/title/description they would like to give to each line item.

- e. Issue of cash flow statement: For Non-Corporate taxpayers and Small Companies (*as per section 2(85) of Companies Act, 2013*), there is no requirement to prepare Cash Flow statement. As per Technical Guide on GST Audit, para VI.(iii), page 145, issued by the Institute of Chartered Accountants of India, Cash Flow statement to be attached to form 9C, **only if applicable**. On the contrary offline tool for Form 9C is making it mandatory to fill in information of Cash Flow mandatory for each and every kind of assessee/taxpayer, irrespective of applicability of cash flow statement. (Exhibit A-26)
- f. Amount of interest declared in Table 9 of GSTR-9 is not picked up for the purpose of Table 9.Q of GSTR-9C. As per instruction 9Q to form 9CL: *"The amount payable as declared in Table 9 of the*

Annual Return (GSTR9) shall be declared here. It should also contain any differential tax paid on Table 10 or 11 of the Annual Return (GSTR9)."

Now there are situations where tax-payer himself has declared liability of tax, interest, penalty etc. in table 9 of GSTR-9, either as additional liability or as part of GSTR-3Bs.

Now for the purpose of table 9Q of form 9C, gstrn portal is only considering figures of tax payable from table 9 of GSTR-9 and other figures of interest etc. are being ignored which is contrast to instructions to form GSTR-9C. This is creating difficulties for tax-payers/auditors while preparing table 9 in GSTR-9C. As auditor is under responsibility to report final amount of liability of tax, interest etc. irrespective of whether declared by tax-payer himself or not, thus where interest is already declared by tax-payer in annual return, it is creating reconciliation item and these avoidable reconciliation items may become source of assessments/inspection without any fault of tax-payers, resulting into loss of nation's precious time.

H. Issues related to correction in GSTR-1

Irrespective of condition of 1 amendment artificially imposed by GSTN, in some case, even single amendment is not being allowed by system for amendment in debit / credit notes and flimsy errors like "Supply Type cannot be changed for saved CDN .Kindly enter same supply type as original CDN" is being shown when tax-payer is merely correcting invoice/DN/CN number. (Exhibit A-27)

I. No means of Rectification, if the IGST paid on exports have accidentally been declared under GSTR3B in column 3(a) instead of declaring it under column 3(b)

- i. In case of refund for exporters, who have paid IGST on exports and have accidentally declared it under head of domestic sales under GSTR3B in column 3(a) instead of export sales with payment of IGST under column 3(b) but have correctly shown the same as export sales in column 66 of GSTR-1.
- ii. The details are not transmitted by the GSTIN. There is no mechanism available where an application can be made to GSTIN for correction of details in 3B and claim refund.

J. No mechanism for claiming the refund of ITC available to dealers since December'17 to the extent of cash deposited towards their liability from July'17 to December'17, they paid due to non availability of transitional credit, the concerned authorities are responding that there is no mechanism on the portal to refund the tax paid during such period.

- i. The dealers who filled Tran-1 FORM to shift from pre-GST regime to GST regime, did not get their pre-GST regime credit transferred to GST regime till December'17, and therefore they had to pay tax from July'17 to December'17 since they were unable to use their pre-GST regime unutilized credit to pay tax. The failure to use the pre-GST regime unutilised credit was on account of the fault/non-functioning of the system, which failed to transfer the transitional credit till December'17.
- ii. It was only in December'17 the transitional credit was reflected in the dealer's credit ledger.
- iii. Therefore dealers who paid tax in cash despite having transitional credit but not having been able to use it because of the non transference of their transitional credit into their Credit Ledger, are eligible to claim the refund of ITC available to them since December'17 to the extent of cash deposited towards their liability from July'17 to December'17.
- iv. Rule 97A of CGST/DGST provides for manual filing of refund, which by any reason a dealer could not claim. Therefore, now when Dealers are filing manual application for refund under Rule 97A in order to claim the refund of ITC available to them since December'17 to the extent of cash deposited towards their liability from July'17 to December'17 which they paid due to non availability of transitional credit, the concerned authorities are responding that there is no mechanism on the portal to refund the tax paid during such period.

K. No mechanism to download the refund filed in RFD-01A.

A dealer can file online refund using FORM RFD-01A. Once refund is filed/uploaded on the portal using FORM RFD-01A, a pop up shows that it has been filled, but the dealer cannot download or save the record of the refund filed in FORM RFD-01A. It does not even permit a print out of the filled up form.